Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

In The
Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1180

DIVISION OF VOCATIONAL REHABILITATION, DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES, STATE OF FLORIDA, and DIVISION OF RISK MANAGEMENT, DEPARTMENT OF INSURANCE, STATE OF FLORIDA,

Petitioners,

vs.

WILBUR KENYARD THOMAS and INDUSTRIAL RELATIONS COMMISSION, STATE OF FLORIDA,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

LUKE G. GALANT
320 East Adams Street
Jacksonville, Florida 32202
Attorney for Petitioners

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

DRAFT

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

Petitioners, Division of Vocational Rehabilitation, Depart-

ment of Health and Rehabilitative Services, State of Florida, and Division of Risk Management, Department of Insurance, State of Florida, by their undersigned attorney, pray that a Writ of Certiorari issue to review Order of the Supreme Court of the State of Florida, entered on the 21st day of November, 1975,[1] denying Petition for Writ of Certiorari[2] to review the Amendment to Order[3] entered by the Industrial Relations Commission of the State of Florida on April 24, 1975, which Amendment to Order reversed *sua sponte* the Order[4] of the Judge of Industrial Claims of the State of Florida issued on February 14, 1975, finding that the respondent Thomas did not have a compensable injury and denying respondent's claim.

JURISDICTION

The Supreme Court of the State of Florida by its Order dated November 21, 1975, allowed to stand the Amendment to Order of the Industrial Relations Commission dated April 24, 1975, which Amendment to Order is a violation of the Petitioners' right to due process and equal protection of the laws, which rights are guaranteed by the Fifth and Fourteenth Amendments of the United States Constitution.

QUESTIONS PRESENTED FOR REVIEW

1. Whether a State appellate tribunal may, *sua sponte*, without violating due process, reverse the comprehensive de-

1. App. A
2. App. B
3. App. C
4. App. D

cision of a trial judge solely because mechanical failure of a recording machine prevented transcription of the evidence adduced at trial.

2. Whether the appellate tribunals of Florida may without violating the right to equal protection of parties to Workmen's Compensation actions, set aside trial judges' decisions in Workmen's Compensation cases solely because no record of such hearings is available for appeal, while refusing to set aside decisions in common law actions despite the same unavailability of transcript.

CONSTITUTIONAL PROVISIONS INVOLVED

1. Fifth Amendment of the Constitution of the United States.[5]

2. Fourteenth Amendment of the Constitution of the United States.[6]

CONCISE STATEMENT OF THE CASE

Respondent employee filed a workmen's compensation claim against petitioners asserting a job related heart attack. By Order of February 14, 1975, the Judge of Industrial Claims, after an extended hearing at which nine witnesses including two physicians testified, denied the claim. The Order was detailed and complete in all respects. Its eleven pages and thirteen paragraphs examined with particularity each and every significant question of fact and law involved in the

5. App. E
6. App. F

claim. The Order concluded with the finding "from all of the testimony, and after considering counsel's memos and reviewing the medical reports in the various hospital records, that the claimant did not have a compensable heart attack."

In the process of preparing the record for the respondent's ensuing appeal, it was discovered that the mechanical device used by the Judge to record testimony at the hearing had malfunctioned and thus failed to record any testimony. On April 3, 1975, the Judge of Industrial Claims certified to the Industrial Relations Commission that this malfunction had occurred and requested an extension of time for the filing of the record on appeal. The Industrial Relations Commission responded by issuing an Order, *sua sponte*, dated April 17, 1975, amended April 24, 1975, reversing the Order dated February 14, 1975 and remanding the cause to the Judge of Industrial Claims for rehearing *de novo*. On May 16, 1975 the Petitioners herein filed a Petition for Writ of Certiorari in the Supreme Court of Florida, seeking reversal of the Industrial Relations Commission's Order of April 24, 1975. The Petition and the brief in support thereof rested *inter alia* upon the violation of the petitioners' rights to federal constitutional due process and equal protection. That Petition was denied by Order of the Supreme Court of Florida on November 21, 1975, which order found "no departure from the essential requirements of law." This Petition is filed for the purpose of seeking reversal of that Florida Supreme Court Order.

ARGUMENT

1. WHETHER A STATE APPELLATE TRIBUNAL, *SUA SPONTE*, MAY WITHOUT VIOLATING DUE PROCESS, REVERSE THE COMPREHENSIVE DECISION OF A TRIAL JUDGE SOLELY BECAUSE MECHANICAL FAILURE OF A RECORDING MACHINE PREVENTED TRANSCRIPTION OF THE EVIDENCE ADDUCED AT TRIAL?

A presumptively fair and impartial trial was held at which the Respondent employee herein was given a full and complete hearing. Following trial a comprehensive judicial opinion was rendered detailing at length the factual premises upon which the judge arrived at his decision holding Petitioners herein free from liability. That was the last time consideration has been given to the *merits* of this case.

The question for determination here is whether the trial judge's decision may be reversed by a State appellate court simply because no formal, contemporaneous record was kept of the trial. The Petitioners contend it may not, without offending fundamental justice.

An essential doctrine of our vaunted system of ordered justice and due process of law is the doctrine of *res judicata*. That doctrine demands that when a party's legal rights are adjudicated in a complete, valid and conclusive trial, that party may not be subjected to a retrial of the same issues, *Commissioner v. Sunnen*, 333 U.S. 591. The Florida appellate courts in this case have done violence to that doctrine and to due process by requiring Petitioners to undergo a trial *de novo* on issues already conclusively decided. It is the Petitioners' contention that a trial judge's decision may not be reversed

except upon a showing of error. Here, since no error has been shown on the part of any party, vacating the trial judge's decision was a violation of Petitioner's constitutionally guaranteed right to the benefits of the decision in their favor.

This question has not been previously considered by this court. It would substantially contribute to the orderliness of the judicial process to determine whether the right to the benefits of an errorless judgment is as fundamental and necessary as the right to an appeal.

2. WHETHER THE APPELLATE TRIBUNALS OF FLORIDA MAY WITHOUT VIOLATING THE RIGHT TO EQUAL PROTECTION OF PARTIES TO WORKMEN'S COMPENSATION ACTIONS, SET ASIDE TRIAL JUDGES' DECISIONS IN WORKMEN'S COMPENSATION CASES SOLELY BECAUSE NO RECORD OF SUCH HEARINGS IS AVAILABLE FOR APPEAL, WHILE REFUSING TO SET ASIDE DECISIONS IN COMMON LAW ACTIONS DESPITE THE SAME UNAVAILABILITY OF TRANSCRIPT?

In denying the Petitioners' Petition for Writ of Certiorari, the Florida Supreme Court violated the Petitioners' right to Equal Protection of the laws.

Petitioners stood before the Supreme Court of Florida as defendants in a Workmen's Compensation claim. That Court held in effect that when defendants in Workmen's Compensation claims win, but for some reason outside said defendants' control no record of the trial is available for appeal, defendants' prevailing must be vacated and a retrial ensue.

In contrast to this is the treatment of defendants in common law and equity actions in Florida. In those actions it is

held that "[T]he obligation to furnish a record sufficient to support the appeal is upon the party urging error." *Moyer v. Moyer*, (1959, 3DCA), 114 So. 2d 638. See also *Lyden v. DiPiera*, (1962, 3DCA), 147 So. 2d 573 and *Smith v. Smith*, (1963, 1DCA), 148 So. 2d 287. In *Agricultural Delivery Service v. Travelers Insurance Company*, (1972, 2DCA), 269 So. 2d 429, the court noted that the lower court had misconstrued a prior mandate to attempt to produce a record for appeal. "It did not direct, nor did it permit, the granting of a new trial *per se*. Indeed, the *parties had their day at trial . . .*" [Emphasis added].

Thus we see that the appellate courts of Florida apply one rule against appellees in Workmen's Compensation cases but a different rule for appellees in other types of civil actions. This arbitrary distinction is based upon no discernible or reasonable classification but rather represents an invidious and needless discrimination against a certain class of litigants in violation of the right to equal protection of the laws.

CONCLUSION

Accordingly, Petitioners pray that this Honorable Court grant their Petition for Writ of Certiorari herein filed to review Order of the Supreme Court of the State of Florida.

Respectfully submitted,

LUKE G. GALANT
320 East Adams Street
Jacksonville, Florida 32202
Attorney for Petitioner

APPENDIX

APPENDIX A

SUPREME COURT OF FLORIDA

JULY TERM, 1975

FRIDAY, NOVEMBER 21, 1975

CASE NO. 47,336

INDUSTRIAL RELATIONS COMMISSION
DIVISION OF VOCATIONAL
REHABILITATION, DEPARTMENT OF
HEALTH AND REHABILITATIVE
SERVICES, STATE OF FLORIDA,
and DIVISION OF RISK MANAGEMENT,
DEPARTMENT OF INSURANCE, STATE
OF FLORIDA,

Petitioners,

vs.

WILBUR KENYARD THOMAS and
INDUSTRIAL RELATIONS COMMISSION,
STATE OF FLORIDA,

Respondents.

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari upon the transcript of record and briefs to review the order of the Industial Relations Commission and the Court finding no departure from the essential requirements of law, it is ordered that said petition be and the same is hereby denied. See: *Scholastic Systems, Inc., et al. vs. LeLoup, et al.*, 307 So. 2d 166 (Fla. 1974).

The Motion for Attorney's Fee filed by attorney for Respondent Thomas is granted and said attorney is hereby allowed a fee of Three Hundred Fifty Dollars ($350) for services in this court, said sum to be paid to said attorney by petitioners within fifteen days after final disposition of this cause.

ADKINS, C.J., ROBERTS, OVERTON, ENGLAND AND SUNDBERG, JJ., CONCUR

A True Copy

TEST:

Sid J. White
Clerk Supreme Court.
By: Kay O. Yent
Deputy Clerk

Y
CC: Hon. Verna Martin, Clerk

Hon. Luke G. Galant
Hon. George L. Proctor
Hon. Verna Martin, Clerk

APPENDIX B

IN THE SUPREME COURT OF
THE STATE OF FLORIDA

DIVISION OF VOCATIONAL
REHABILITATION, DEPARTMENT
OF HEALTH AND REHABILITATIVE
SERVICES, STATE OF FLORIDA,

Employer,

and

DIVISION OF RISK MANAGEMENT,
DEPARTMENT OF INSURANCE,
STATE OF FLORIDA,

Carrier,

Petitioners,

-vs-

WILBUR KENYARD THOMAS,

Employee,

and

INDUSTRIAL RELATIONS COMMISSION,
STATE OF FLORIDA,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE
INDUSTRIAL RELATIONS COMMISSION

TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF THE STATE OF FLORIDA:

Your petitioners, Division of Vocational Rehabilitation, employer, and Division of Risk Management, carrier, bring this their petition for a writ of certiorari against Wilbur Kenyard Thomas, employee, and the Florida Industrial Relations Commission, respondents, saying:

1. This is an application for a writ of certiorari under Rules 4.1 and 4.5 c of the Florida Appellate Rules providing for certiorari to review compensation orders of the Florida Industrial Relations Commission. It is anticipated that the available original record of the proceedings before the Judge of Industrial Claims will be transmitted to this Honorable Court by the Clerk of the Florida Industrial Relations Commission as required by law, even though the Industrial Relations Commission apparently never saw, much less considered, the Order of the Judge of Industrial Claims which it reversed. To facilitate consideration of this petition, however, petitioners are attaching hereto copy of the Judge of Industrial Claims' Order of February 14, 1975, of his Certificate of April 3, 1975, of the Industrial Relations Commission's Order of April 17, 1975, and of the Industrial Relations Commission's Amended Order of April 24, 1975.

2. The rendition date of the Florida Industrial Relations Commission's Order under review is April 17, 1975, as amended by Order of April 24, 1975. The petitioners are the employer and its carrier. The respondents are respectively the employee and the Florida Industrial Relations Commission, all as designated under and pursuant to the Workmen's Compensation Law of the State of Florida, Chapter 440, Florida Statutes.

3. Respondent contended that he sustained a compensable heart attack. Petitioners controverted. A detailed and extensive hearing was held before the Judge of Industrial Claims. Following this hearing at which nine witnesses testified, the Judge of Industrial Claims entered an eleven-page Order dated February 14, 1975. That Order extensively detailed the Judge's findings of fact and concluded that respondent's heart attack was not compensable.

4. In the process of preparing the record for respondent's Application For Review, it was discovered that the Voicewriter used by the Judge of Industrial Claims to record the testimony at the hearing had malfunctioned and thus failed to record any testimony. On April 3, 1975, the Judge of Industrial Claims certified to the Industrial Relations Commission that this malfunction had occurred and requested an extension of time for the filing of an appeal. The Industrial Relations Commission responded by issuing an Order, *sua sponte*, dated April 17, 1975, amended April 24, 1975, reversing the Order dated February 14, 1975, and remanded the cause to the Judge of Industrial Claims for rehearing. This petition is filed for the purpose of seeking a reversal of the Industrial Relations Commission's Order dated April 17, 1975, as amended April 24, 1975.

5. The issue involved in this petition is whether the Industrial Relations Commission, sitting as an appellate body, acted with proper regard to fundamental justice, to the essential requirements of law, and to due process, both under the Constitution of the State of Florida and the United States Constitution, when it ordered a hearing *de novo* simply because no transcript was available for appeal, even though an eleven-page Order reciting the testimony and finds was available. Petitioners submit that *all* relevant precedents indicate that

the Commission erred in ordering the hearing *de novo* and furthermore, that such an Order was violative of petitioners' rights to justice and due process of law. See *Agricultural Delivery Service, Inc. vs. Travelers Insurance Co.*, 269 So.2d 429 (Fla.App. 1972); *Travelers Insurance Co. vs. Agricultural Delivery Service*, 262 So.2d 210 (Fla.App. 1972); *Smith vs. Smith*, 148 So.2d 287 (Fla. App. 1963); and *Lyden vs. DePiera*, 147 So.2d 573 (Fla.App. 1963).

6. This petition should be granted to prevent execution of an Order which constitutes a departure from the essential requirements of the law and is therefore illegal. Petitioners have suffered through a complete hearing after which they were found to be free of liability for the claim made. To rehear the claim as ordered by the Commission would be a violation of the rule of *res judicata*, a rule which is a basic foundation of due process of law. The fundamental ideas of justice which are our heritage require that petitioners not be placed in jeopardy again by a *de novo* hearing. It should be further noted that the Florida Supreme Court has apparently never passed on the issue involved in this case, although the District Courts of Appeal have decided the issue numerous times (in accordance with the views of petitioners).

WHEREFORE, petitioners urge that the Order of the Florida Industrial Relations Commission be reversed and that the Order of the Judge of Industrial Claims be reinstated.

Respectfully submitted,

DAWSON, GALANT, MADDOX,
SULIK & NICHOLS, P.A.
320 East Adams Street
Jacksonville, Florida 32202

By /s/ LUKE G. GALANT
Attorneys for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copy of the foregoing was mailed to George L. Proctor, Attorney for Employee, and to the Florida Industrial Relations Commission, this 6th day of May, 1975.

/s/ LUKE G. GALANT
Attorney

APPENDIX C

State of Florida
INDUSTRIAL RELATIONS COMMISSION

CL. NO. 262-26-6427

D/A 10/29/74

(Filed April 24, 1975)

Wilbur Kenyard Thomas,

Appellant

v.

Division of Vocational
Rehabilitation

Division of Risk Management,

Appellees

Bruce, Smith and Proctor, Jacksonville, for Appellant
Luke G. Galant, Jacksonville, for Appellees

AMENDMENT TO ORDER

Per Curiam.

The Industrial Relations Commission's Order entered in this cause on April 17, 1975, is amended to read as follows:

> This cause comes before the Industrial Relations Commission upon claimant's Application for Review of the Judge of Industrial Claims' Order dated February 14, 1975. The Judge of Industrial Claims has

> certified that, because of mechanical failure, it will be impossible to make a transcription of the evidence adduced in the hearing from which that Order arose.
>
> Because the Order herein is unsupported by a record, the Industrial Relations Commission, *sua sponte*, reverses the Order dated February 14, 1975 and remands jurisdiction of this cause to the Judge of Industrial Claims for the purpose of conducting such further proceedings as are necessary and proper.

It is so ordered.

SEAL

INDUSTRIAL RELATIONS COMMISSION

LEONARD A. CARSON, Chairman
ELMER O. FRIDAY, JR., Commissioner
LEANDER J. SHAW, JR., Commissioner

This is to certify that on this April 24, 1975, the above Order was filed in the office of the Industrial Relations Commission at Tallahassee and a copy sent by certified mail to each interested party at his last known address.

INDUSTRIAL RELATIONS COMMISSION

BY /s/ V. MARTIN

Clerk

(Title)

cc: Thomas J. Carroll,
Judge of Industrial Claims

APPENDIX D

STATE OF FLORIDA DEPARTMENT OF COMMERCE
DIVISION OF LABOR AND EMPLOYMENT
OPPORTUNITIES
BUREAU OF WORKMEN'S COMPENSATION

CLAIM NO.: 262-26-6427

DATE OF ACCIDENT: 10/29/74

EMPLOYEE: WILBUR KENYARD THOMAS
6153 Ortega Farms Blvd.
Jacksonville, Florida 32210

Represented by: GEORGE L. PROCTOR
Barnett Bank Building
Jacksonville, Florida 32202

EMPLOYER: DIVISION OF VOCATIONAL
REHABILITATION
1325 San Marco Avenue
Jacksonville, Florida 32207

CARRIER: DIVISION OF RISK MANAGEMENT
Larson Building
Tallahassee, Florida 32304

Represented by: LUKE G. GALANT, ESQUIRE
320 East Adams Street
Jacksonville, Florida 32202

COMPENSATION ORDER
OF
JUDGE OF INDUSTRIAL CLAIMS
THOMAS J. CARROLL

THIS CAUSE came on to be heard before me, the undersigned Judge of Industrial Claims, on January 28, 1975, and pursuant to the evidence and testimony presented as well as the stipulations between the parties, I hereby make the following findings of fact:

1. That the Judge of Industrial Claims has jurisdiction of the parties and the subject matter hereto.

2. Claim was made that a pre-existing heart condition was aggravated by stress caused by additional work undertaken by the claimant for this employer, which stress aggravated the pre-existing condition and produced a heart attack. Claim was made for temporary total benefits since October 29, 1974 and continuing, and for payment of medical and hospital expense, plus award of attorney fees.

3. The claim was defended on the grounds that the claimant had a long-standing history of coronary insufficiency; that there was no unusual stress or strain prior to the heart attack of October 29, 1974; that any stress the claimant may have sustained was related to a denied promotion; that there was no causal connection between the heart attack and the employment; and that the claim was denied en toto.

4. It was stipulated between the parties that the claimant's average weekly wage was $233.20, with a corresponding compensation rate of $80.00; that the claimant was in the employment of this employer on October 29, 1974, without admitting that an accident occurred; that no compensation benefits had

been paid; that certain hospital records covering earlier admissions of the claimant to St. Vincent's hospital, including doctors' reports, and certain records, would be admitted in evidence; and that in the event attorney fees were applicable, counsel would attempt to stipulate to a fixed fee or otherwise file affidavits.

5. In making my findings of fact and final determination in this cause, I have carefully considered all of the evidence presented before me, as well as the candor and demeanor of the witnesses who testified. I have carefully weighed and considered all the testimony and evidence and have resolved any conflicts therein.

6. I find the claimant is 54 years of age, is married, and his wife and two children reside with him in their home. I find he attended high school in Lake Butler, Florida, but completed his high school equivalency while in the Navy. I find he left high school and entered the C.C.C., serving in Nevada and then was in the Navy for a period of time during which he completed his high school equivalency. I find that thereafter he was employed by various employers, including Rose Construction Company and the Jacksonville Journal; that he attended college from 1951 to 1955, obtaining an A.B. degree, with a major in history, and thereafter he taught history in various schools. I find he had special teaching skills with retarded children and eventually obtained employment in Jacksonville, teaching, and then in August of 1966 he entered the employment of the Florida State Department of Vocational Rehabilitation where he worked until his heart attack on October 29, 1974.

7. I find that in 1959 the claimant had 80% of his stomach removed and has since had gastrointestinal problems, and he

had two procedures for lip cancers performed in 1961 and 1962. I find that in 1965 there was an episode of chest pain when he was seen at St. Vincent's hospital by his family doctor, Doctor Foley, and that he also had chest pains following an automobile accident in 1970, and developed pneumonia following that accident. I find he has suffered occasional chest pain since 1965 and if it would be severe he would report the matter to his family doctor, Dr. Foley.

8. I find that in 1973 the claimant was active as a counselor in a school problem, dealing with retarded children, and had a secretary assigned to him to assist him. I find that in October of 1973 his caseload was increased when he was assigned some college cases of handicapped people, and his workload was fairly regular up to May to 1974. I find that at that time he was temporarily promoted to acting supervisor which placed him in charge of eight counselors who, in turn, had charge of numerous students in the program, and that this increased his workload in that he continued to do his former work as a counselor in addition to undertaking the new supervisory duties, and he would have to fill in as necessary when any counselor positions were unfilled. I find his workload was further complicated by extension of responsibility into adjacent counties, surrounding Duval County, and that as a result of this, the claimant increased his work day, arriving at the office at 7:30 a.m. instead of at 8:00 a.m., usually working through his lunch hour, and remaining until 5:20 or 5:30 in the evening instead of departing at 5:00 p.m. I find he estimated an extra 10 hours of work per week and would occasionally take work home on the weekends also.

9. I find that after being temporarily promoted and accepting the additional work duties and assignments, the claimant was kept more or less in a case of suspension by not knowing

whether or not his promotion was finally approved. I find that in July he received a check containing a pay raise, indicating the promotion had been approved, and another similar check in August with a pay increase, but then his pay reverted to its original level, and he gathered from this that his promotion had not been finally approved. I find he was upset enough to cause him to correspond with the Governor and with the Director of the Department, voicing a grievance concerning the fact that he was not permanently promoted. I find that he undertook a grievance procedure, but was still continuing in his temporary position as acting supervisor, when he departed for a planned, scheduled, convention in Las Vegas, Nevada some two weeks prior to October 28, 1974. I find that his wife and children accompanied him to the convention and that during this two-week period he was away from the office and on a less strenuous routine. I find that he returned to the office and he indicated that he worked Monday, October 28, 1974, on accumulated paper work, and he was also in the office on Tuesday, October 29, 1974 attending to his paper work, when he experienced a feeling of a lump in his chest going up in his throat, and he asked his secretary to call Dr. Foley for an appointment. I find he felt ill enough to immediately start out for the doctor's office but passed out in the lobby of the building and was taken by ambulance to the emergency room at St. Vincent's Hospital, where he came under the care of Dr. Foley. I find that following a series of treatment, hospitalizations, and tests, open heart surgery was eventually performed on December 30, 1974, and the claimant was discharged from the hospital on January 8, 1975. I find the surgery was performed by Dr. Batchelder, and that the claimant continues under the care of Doctors Foley and Batchelder, and further procedures are necessary before the outcome of this surgery is finally known.

I find he will not be able to return to work for at least three months following the heart surgery. I find that some of the hospital and doctor bills have been paid by a Blue Cross-Blue Shield policy, but the pertinent bills were not available on the day of the hearing, but it was agreed they would be admitted in evidence when available.

10. I find the claimant's supervisor indicated that he was a conscientious worker and was concerned about his work performance. I find that he noted the impact on the claimant when he realized that his promotion was not finally approved. I find, in considering the fact that the promotion was not finally approved. I find, in considering the fact that the promotion was not finally approved, that the claimant was aware of this for some period of time prior to his heart attack and prior to his departure to the convention. I find that the regulations, technically, required that he have a Masters Degree for this promotion. I find that while the Grievance Committee hearing was continuing, these other occurrences intervened. I find the Grievance Committee eventually recommended that the claimant be retained in his position on a probationary status for a period of six months and if his work was satisfactory that he be kept permanently in that position, but the head of the department did not accept the recommendation of the Grievance Committee, but this was not known until after the heart attack had occurred. I find that on the morning of October 29,. 1972, a number of people visited the claimant in his office and observed him to be about his usual work and appearing normal and functioning and conversing in a normal manner. I find the last person to be in his presence, prior to his becoming ill, was his former secretary, Patricia L. Jensen who visited at the building that day from her usual office at Englewood High School.

I find that she observed that he did not appear to be in any stress and they conversed for about ten minutes, discussing various matters, including his trip to Las Vegas. I find he suddenly began to appear ill and said that his stomach was hurting and asked her to make a doctor's appointment for him, and she did so, and about that time he indicated he wanted to go on to the doctor's office and she accompanied him, intending to drive him to the doctor's office, but he passed out in the lobby of the building and was taken on by an ambulance. I find another secretary had conversed with him earlier in the day and he appeared normal to her during the course of their conversation. I find that one of the counselors, that the claimant supervised, identified as Janet Sheaffer, also visited with the claimant earlier that morning before he became ill and she had a number of complaints and matters that ordinarily might be upsetting to a supervisor who had just returned from a convention trip, but I find from the testimony of Patricia L. Jensen that the claimant appeared normal and was not upset in his appearance at the time he initially had his stomach complaints in the office on the morning of October 29, 1974.

11. I find Dr. Joseph D. Foley is a general practitioner who has seen the claimant down through the years since August 27, 1965. I find that some of his earlier notations and records refer to high blood pressure situations and complaints of chest pains. I find in addition to the heart and chest pain complaints, this doctor had treated the claimant for an indigestion problem, resulting from his earlier ulcer condition, for flu, urinary problems, headache complaints and routine physical checkups. I find that when the doctor saw him in the emergency room at St. Vincent's, the claimant had poor heart rhythm and the doctor suspected a possible coronary occlu-

sion and it later developed that the claimant had in fact had an acute myocardial infarction. I find that the infarction was treated during the first hospitalization and the claimant was released with the understanding he would be readmitted later for catheterization, and this was done earlier than planned because he had continuing complaints, and these studies were completed before Christmas. I find he was then released from the hospital, and then admitted to the hospital again on December 27, 1974, and during this admission Doctor Batchelder performed open heart surgery with bypasses to the three main coronary arteries. I find that it was Dr. Foley's opinion that the claimant's additional workload caused him stress and strain and this was a factor precipitating the myocardial infarction that occurred on October 29, 1974. I find a reasonable expert witness fee for Dr. Foley's appearance is $50.00.

12. I find that Dr. David R. Moomaw is an internist, specializing in cardiology, and saw the claimant in consultation with Doctor Foley while he was at St. Vincent's hospital. I find this doctor obtained some information from the claimant and some from his wife and there was some reference to the history of coronary pain during a trip to a western state, but the claimant denied such complaints during his recent trip to Las Vegas and indicated it had been more than 35 years since he had last previously been in a western state. I find that there is some confusion in this portion of the history. I find that Dr. Moomaw was of the opinion that the three major factors producing myocardial infarctions are high blood pressure, cigarette smoking and blood lipids. I find the fact that the claimant had a mild degree of diabetes would also be a risk factor but a minor risk factor when considered along with the three major risk factors. I find from this doctor's

testimony that the claimant had a long standing, pre-existing condition, resulting in clogging of the three main coronary arteries and preventing them from furnishing adequate blood and oxygen supply to the heart muscle. I find that it was this doctor's opinion that the fact that the claimant undertook a greater workload for a period of five months prior to the myocardial infarction would not be a factor that would be a probable precipitating cause, in that the stress remained constant over a period of time. I find this doctor was of the opinion that if he was subjected to a particularly stressful situation and the heart attack immediately followed this stress, that then there would be more basis for saying there was a casual relationship, but not for a heart attack following fairly uniform stress for a period of five months and resulting from prolonged working hours. I find the fact that the heart attack occurred after a two-week break from the work, when the claimant was more or less in a vacation status while on a trip to the west, attending a convention, would also detract from the probability that the myocardial infarction was precipitated by stress, resulting from extra working hours, in that the attack occurred following a rest period rather than a stress period.

13. I find from all of the testimony, and after considering counsel's memos and reviewing the medical reports in the various hospital records, that the claimant did not have a compensable heart attack. I find that there was no direct trauma to the heart, producing a heart attack. I find no isolated or continuing stressful situation immediately preceding the heart attack that could be considered a precipitating cause of the heart attack. I find I should accept Doctor Moomaw's opinion and reject Doctor Foley's opinion. I have accepted Doctor's Moomaw's opinion that the additional

working hours and additional workload undertaken by the claimant for a period of five months would not be sufficient to precipitate a heart attack, and I also find this applies to any emotional upset or strain the claimant may have subjected himself to as a result of his disappointment over the non finality of his promotion.

ACCORDINGLY, I find that the claim filed herein should be and the same is hereby denied.

DONE AND ORDERED at Jacksonville, Duval County, Florida, this 14th day of February, 1975.

S E A L

/s/ THOMAS J. CARROLL
Judge of Industrial Claims

cc: to Parties

THIS IS TO CERTIFY that the foregoing order was entered on the 14th day of February, 1975, and that a copy thereof was sent on said date by certified mail to the claimant and the employer and by regular mail to all other interested parties, at the last known address of each.

/s/ MIRIAM L. BYRD

[Appendix E]

AMENDMENT V

"No person shall be *** deprived of life, liberty, or property, without due process of law ***"

[Appendix F]

AMENDMENT XIV

"*** nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."